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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,589	05/23/2007	Antonio Giuseppe Perra	3135-062040	4463

28289 7590 12/10/2008
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EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT	PAPER NUMBER
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3781

MAIL DATE	DELIVERY MODE
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12/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/585,589	Applicant(s) PERRA, ANTONIO GIUSEPPE	
	Examiner NIKI M. ELOSHWAY	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-42 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 22-28, 30-36 and 38-42 is/are rejected.
- 7) ☒ Claim(s) 29 and 37 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/31/07</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 22-26, 28, 30-32, 36, 38-40 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Howard et al. (U.S. 4,171,060). Howard et al. teach a device, shown in figures 8 and 9, for sealing drink containers 2. The device comprises a sealing element 14 which is adapted to engage on a wall of a food product container around a wall opening arranged in the wall, as shown in figures 11 and 13. The operating element 4 co-acts with the sealing element for displacing the sealing element between an opened position, shown in figure 12 and 14, leaving the wall opening clear and a closed position, shown in figures 11 and 13, sealing the wall opening. The operating element is provided with coupling means as 11 for coupling the food product container at hub 13 (see col. 2 lines 58-66). The relative orientation of the sealing element and the operating element can be changed (the operating element is rotated in the directions of the arrows in figure 9) such that the operating element can cause the sealing element in the closed position to engage under bias on the wall (the valve elements at lead line 16 are biased in the closed position to seal against the container) for substantially medium-tight sealing of the food product container.

The sealing element is located inside the beverage container. The sealing element and operating element enclose the portion of the container located between the two elements. The distance between the sealing element and operating element changes as the sealing element is pushed downwardly. The change is shown in figures 11 and 12 (and also in figures 13 and 14).

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The sealing element is rotated downwardly about a horizontal axis extending through the midsection that is attached to the hub 13 (see col. 2 lines 35-40). The rotation moves the sealing element relative to the operating element. The projecting engaging member is element 8. The connection between the operating element and the sealing element is a screw.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howard et al. (U.S. 4,171,060) in view of Choi et al. (U.S. 2006/0226110). Howard et al. teach the claimed invention except for the seal on the wall of the food product. Howard et al. teach the use of a seal, however, the seal is located on the sealing element. Choi et al. teach that it is known to provide a container with a seal around the opening (see element figures 26 and 27). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Howard et al. with the seal being on the container instead of the sealing element, as taught by Choi et al., in order to provide a secure engagement with the sealing element even when there are imperfections in the container wall surrounding the opening.

5. Claims 33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howard et al. (U.S. 4,171,060) in view of Dibdin et al. (U.S. 2005/0115977). Howard et al. teach the claimed invention except for the opening of the operating element. Dibdin et al. teach that it is known to provide a operating element with openings (see elements 119 and 117). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Howard et al. with the

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operating element having openings, as taught by Dibdin et al., in order to better control dispensing and venting.

6. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howard et al. (U.S. 4,171,060) in view of Dibdin et al. (U.S. 2005/0115977), as applied to claim 33 above, and further in view of Eckstrum (U.S. 2005/0150895). The modified device of Howard et al. teaches the claimed invention except for the screen. Eckstrum teaches that it is known to provide a container with a screen (see element 18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified device of Howard et al. with a screen, as taught by Eckstrum, in order to prevent debris from entering the container.

7. Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howard et al. (U.S. 4,171,060) in view of Eckstrum (U.S. 2005/0150895). The device of Howard et al. teaches the claimed invention except for the container being a drink can. Eckstrum teaches that it is known to provide a container which is a drink can. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Howard et al. with a container which is a drink can, as taught by Eckstrum, in order to use a well known and widely used drinking container.

Allowable Subject Matter

8. Claims 29 and 37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art is cited for the secondary closure and opening means.

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10. THIS ACTION IS NON-FINAL.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIKI M. ELOSHWAY whose telephone number is (571)272-4538. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Niki M. Eloshway/
Niki M. Eloshway
Examiner
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nme